

REMARKS

This amendment is responsive to the *Final* Office Action of September 19, 2008. Reconsideration and allowance of claims 2-6, 12, and 14-22 are requested.

The Office Action

Claims 2-10, 12, and 14-23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Seely (US 2003/0117296) in view of Zaleski (US 2003/0149597).

Claims 7-10 and 23 stand rejected under 35 U.S.C. § 101.

The Present Amendment Should Be Entered

First, it is submitted that the *Finality* of the September 19, 2008 Office Action is *premature*. Amendment B placed claim 5 in independent form including all of the subject matter of its parent claim 1, and adding no new subject matter. Because a dependent claim is read as including all of the subject matter of its parent claim, it is submitted that placing claim 5 in independent form did not “amend” claim 5 in the sense of requiring further search or consideration. That is, the applicant’s placing of claim 5 in independent form did not necessitate the citation of new references. Accordingly, it is submitted that the *Finality* of the September 19, 2008 Office Action is *premature*.

Second, this Amendment should be entered as simplifying the issues on Appeal. This Amendment cancels claims 7-11 and 23. Further, this amendment corrects potential 35 U.S.C. § 112, second paragraph issues in claims 15, 17, and 18. Claims 17 and 18 purported to depend from cancelled claim 13. It is believed that the Examiner, who did not raise this 35 U.S.C. § 112 issue already, treated claims 17 and 18 as depending from claim 15 in the Office Action. This Amendment merely corrects this potential, although not previously raised, indefiniteness.

Claim 15 calls for displaying “the cumulative curve”. However, claim 15 lacks antecedent basis for “the cumulative curve”. The present Amendment looks to create appropriate antecedent basis by incorporating the limitation of prior claim 14 from which claim 15 previously depended. Because the added limitation comes from prior parent claim 14 and parallels the language of claim 5, lines 6-7, it is submitted

that this limitation has been previously considered by the Examiner. Claim 15 has also been amended to delete the stray “;”(semicolon) which makes no grammatical sense where it is located. Finally, claim 15 has been amended to delete the double inclusion of “the histogram data”. This eliminates the requirement that the histogram data is displayed concurrently with itself which, while perhaps not technically incorrect, does read awkwardly.

Finally, claim 12 has been amended to include the subject matter of its parent claim 7. Because a dependent claim is read as including all of the subject matter of its parent claim, it is submitted that amending dependent claim 12 to include the subject matter of its parent claim (and cancelling its parent claim) does not alter the scope of the claim and raises no issues that would require further search or consideration.

Third, for the reasons set forth below, the present amendment places the application in condition for allowance.

**Claims 2-6, 12, and 20-22 Distinguish Patentably
Over the References of Record**

Claim 5 calls for the cumulative curve *combined with* the histograms to be output as picture signals. **Seely**, as the Examiner acknowledges, outputs histograms, but does not disclose or suggest outputting a cumulative curve, much less a cumulative curve *combined with* the histograms.

Zaleski does not cure this shortcoming of **Seely**. As the Examiner notes, Figure 3 of **Zaleski** does show a histogram. Specifically, Figure 3 of **Zaleski** shows four superimposed histograms, each plotting frequency versus age for patients classified as ICD-9 code=610.1 with each of the four curves representing a different number of patients in the sampling. That is, Figure 3 illustrates three variables: (1) frequency, (2) age, and (3) sampling size, with a fourth potential variable, code, held constant at code=610.1. Figure 6 discloses a cumulative curve, more specifically, five superimposed cumulative curves. Specifically, Figure 6 of **Zaleski** shows cumulative frequency versus age for a sampling of 500 patients with each curve representing a different code, specifically codes 610.1, 217, 174.8, 174.9, and 611.72. That is, Figure 6 illustrates three variables: (1) frequency, (2) age, and (3) code, with a fourth potential variable, sampling size, held constant.

First, Zaleski does not disclose displaying the cumulative curve *combined with* the histograms.

Second, it is submitted that Zaleski provides no motivation to display his cumulative curves and histograms in combination with each other. Figure 3 plots (1) frequency versus (2) age versus (3) number of data points for a single code. By contrast, Figure 6 plots cumulative (1) frequency versus (2) age versus (3) code for a fixed number of data points. That is, the displays of Figures 3 and 6 of Zaleski display different variables and different combinations of information. There is no apparent reason why or what benefit would be gained by combining the displays of Figures 3 and 6 of Zaleski. Such a display would intermix data of different types and have no apparent diagnostic value and no clear meaning. Accordingly, it is submitted that neither Seely nor Zaleski, nor the combination thereof, provide any reason why or motivation to combine a cumulative curve with histograms as a picture signal.

As an aside, it should be noted that in the other Figures of Zaleski, the displayed data is even less interrelated than Figures 3 and 6. The above-discussion was based on the best case scenario for the Examiner and the worst case scenario for the applicant. Even so, it is submitted that neither Zaleski, nor the combination of Seely and Zaleski, would put the reader in possession of the concept of outputting the cumulative curve *combined with* the histograms as picture signals.

Accordingly, it is submitted that **claim 5 and claims 2-4, 6, and 20-22** distinguish patentably and unobviously over the references of record.

Claim 20 further emphasizes this distinction by requiring displaying the histogram with the cumulative curve superimposed with the histogram and the cumulative curve having common axes and common scales. Neither Zaleski, Seely, nor the combination thereof disclose, suggest, or put the reader in possession of the concept of superimposing the histogram with the cumulative curve. Moreover, the cumulative curves and histograms of Zaleski have different axes and/or different scales.

Accordingly, it is submitted that **claim 20** distinguishes yet more forcefully over the references of record.

Claim 21 calls for the inclusion of a retrospective analysis aids. It is submitted that the listed retrospective analysis aids are not disclosed by Zaleski,

Seely, nor the combination thereof. Accordingly, it is submitted that **claim 21** distinguishes yet more forcefully over the references of record.

**Claims 14-19 Distinguish Patentably
Over the References of Record**

Claim 15 calls for display means for visually displaying the cumulative curve *concurrently with* the histogram data as the medical measurement data is received. As discussed above, the applicant and the Examiner appear to be in agreement that Seely does not disclose the displaying of cumulative curves, much less concurrently with a histogram.

First, Zaleski does not display a cumulative curve concurrently with the histogram. Indeed, the cumulative curves and histograms of Zaleski are each conveying different information or performing different analyses. Zaleski provides no motivation or apparent reason why one would want to display the Zaleski cumulative curve displays concurrently with the Zaleski histogram data displays. Rather, it is submitted that Zaleski teaches against such concurrent display.

Second, claim 15 calls for displaying the cumulative curve concurrently with the histogram *as the medical measurement data is received*. In Zaleski, the data and the cumulative curves and histograms are historical. None are displayed concurrently with the receipt of medical data. Although Seely discloses displaying histograms as medical data is received, neither Zaleski nor Seely disclose or suggest, nor teach the reader that one should create or display cumulative curves as medical measurement data is received.

Accordingly, it is submitted that **claim 15 and claims 14 and 16-19 dependent therefrom** distinguish patentably and unobviously over the references of record.

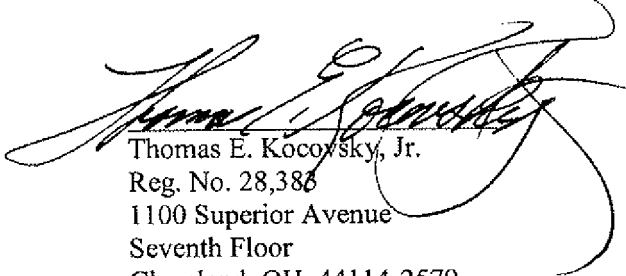
CONCLUSION

For the reasons set forth above, it is submitted that claims 2-6, 12, and 14-22 distinguish patentably and unobviously over the references of record. An early allowance of all claims is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned at (216) 861-5582.

Respectfully submitted,

Fay Sharpe LLP



Thomas E. Kocovsky, Jr.
Reg. No. 28,388
1100 Superior Avenue
Seventh Floor
Cleveland, OH 44114-2579
(216) 861-5582